

SENATE BILL No. 357

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-22-10; IC 6-1.1; IC 6-2.5-5-39; IC 6-3; IC 6-3.1; IC 22-4.1-7.

Synopsis: Tax incentives for economic development. Provides for coordinating Indiana rules that affect Indiana endangered industries with national policies. Eliminates the 30% floor on the assessed valuation of personal property. Exempts purchases of tangible personal property directly used in research and development from the sales tax. Provides that, for purposes of the Indiana adjusted gross income tax, business income is apportioned based on the sales factor. Eliminates the property factor and payroll factor that are currently also used in apportioning income. Expands the capital investment tax credit to apply statewide. Increases the credit from 14% to 30%. Provides an employer with at least 250 full-time employees a state tax liability credit equal to 50% of expenditures made for job skills training programs on behalf of its employees.

Effective: Upon passage; July 1, 2004; January 1, 2005.

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January 12, 2004, read first time and referred to Committee on Finance.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 357

A BILL FOR AN ACT to amend the Indiana Code concerning economic development.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-22-10 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 10. Restrictions on Rulemaking**

5 **Sec. 1. The definitions in IC 4-22-2 apply throughout this**
6 **chapter.**

7 **Sec. 2. As used in this chapter, "NAICS" refers to the six (6)**
8 **digit North American Industry Classification System adopted by**
9 **the United States Office of Management and Budget to classify**
10 **establishments by type of business activity.**

11 **Sec. 3. As used in this chapter, "industry" refers to a grouping**
12 **of business establishments:**

- 13 (1) identified by NAICS code number; and
14 (2) sharing two (2) (sector), three (3) (subsector), four (4)
15 (industry group), five (5) (industry), or six (6) (U.S. industry)
16 of the six (6) NAICS digits assigned to a business
17 establishment.



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1 **Sec. 4. As used in this chapter, "economic decline" means a**
 2 **business condition in which both of the following occur in an**
 3 **industry in the same year:**

- 4 (1) **An overall decrease in employment of at least ten percent**
 5 **(10%).**
 6 (2) **An average production decline of at least ten percent**
 7 **(10%).**

8 **Sec. 5. As used in this chapter, "Indiana endangered industry"**
 9 **means an industry that meets all of the following criteria:**

- 10 (1) **The industry has had a substantial presence in Indiana for**
 11 **at least twenty (20) years.**
 12 (2) **The industry has had an economic decline caused by any**
 13 **combination of the following in at least two (2) of the**
 14 **immediately preceding calendar years:**
 15 (A) **Foreign competition.**
 16 (B) **Regulatory mandates.**
 17 (C) **Health care insurance rates or other inflated business**
 18 **costs.**
 19 (D) **Decline in consumer demand.**
 20 (3) **The industry is recognized as qualifying under**
 21 **subdivisions (1) and (2) in a:**
 22 (A) **written declaration by the lieutenant governor; or**
 23 (B) **concurrent resolution adopted by both houses of the**
 24 **general assembly.**

25 **Sec. 6. As used in this chapter, "national policies" refers to**
 26 **standards of conduct for an industry or a part of an industry that:**

- 27 (1) **are established in a federal statute or by a federal agency;**
 28 (2) **concern the same subject as a state rule; and**
 29 (3) **do not preempt state authority to establish a more**
 30 **stringent standard of conduct.**

31 **Sec. 7. The authority of an agency to adopt a rule, including an**
 32 **agency subject to IC 13-14-9, that establishes a more stringent**
 33 **standard than the related national policies is suspended to the**
 34 **extent that it requires an Indiana endangered industry to comply**
 35 **with a standard of conduct that exceeds the standard established**
 36 **in the related national policies. The period of the suspension is**
 37 **equal to the lesser of the following:**

- 38 (1) **Five (5) years after the industry is recognized as an**
 39 **Indiana endangered industry under section 5(3) of this**
 40 **chapter.**
 41 (2) **The period specified in the document recognizing the**
 42 **industry as an Indiana endangered industry under section**

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5(3) of this chapter.

SECTION 2. IC 6-1.1-3-22, AS AMENDED BY P.L.245-2003, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 22. (a) Except to the extent that it conflicts with a statute and subject to subsection (f), 50 IAC 4.2 (as in effect January 1, 2001), which was formerly incorporated by reference into this section, is reinstated as a rule.

(b) Tangible personal property within the scope of 50 IAC 4.2 (as in effect January 1, 2001) shall be assessed on the assessment dates in calendar years 2003 and thereafter in conformity with 50 IAC 4.2 (as in effect January 1, 2001), **except that a minimum valuation may not be applied to the total valuation of a taxpayer's assessable depreciable personal property under 50 IAC 4.2-4-9 (as in effect January 1, 2001) or any similar rule. 50 IAC 4.2-4-9 (as in effect January 1, 2001) is void. The publisher of the Indiana Administrative Code and Indiana Register shall remove this section from the Indiana Administrative Code.**

(c) The publisher of the Indiana Administrative Code shall publish 50 IAC 4.2 (as in effect January 1, 2001) in the Indiana Administrative Code.

(d) 50 IAC 4.3 and any other rule to the extent that it conflicts with this section is void.

(e) A reference in 50 IAC 4.2 to a governmental entity that has been terminated or a statute that has been repealed or amended shall be treated as a reference to its successor.

(f) The department of local government finance may not amend or repeal the following (all as in effect January 1, 2001):

- (1) 50 IAC 4.2-4-3(f).
- (2) 50 IAC 4.2-4-7.
- ~~(3) 50 IAC 4.2-4-9.~~
- ~~(4)~~ (3) 50 IAC 4.2-5-7.
- ~~(5)~~ (4) 50 IAC 4.2-5-13.
- ~~(6)~~ (5) 50 IAC 4.2-6-1.
- ~~(7)~~ (6) 50 IAC 4.2-6-2.
- ~~(8)~~ (7) 50 IAC 4.2-8-9.

SECTION 3. IC 6-1.1-8-44, AS AMENDED BY P.L.245-2003, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 44. (a) Except to the extent that it conflicts with a statute and subject to subsection (f), 50 IAC 5.1 (as in effect January 1, 2001), which was formerly incorporated by reference into this section, is reinstated as a rule.

(b) Tangible personal property within the scope of 50 IAC 5.1 (as

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in effect January 1, 2001) shall be assessed on the assessment dates in calendar years 2003 and thereafter in conformity with 50 IAC 5.1 (as in effect January 1, 2001), **except that a minimum valuation may not be applied to the total value of a taxpayer's distributable depreciable personal property or to the total value of the taxpayer's locally assessed depreciable personal property under 50 IAC 5.1-6-9 (as in effect January 1, 2001) or any similar rule. 50 IAC 5.1-6-9 (as in effect January 1, 2001) is void. The publisher of the Indiana Administrative Code and Indiana Register shall remove this section from the Indiana Administrative Code.**

(c) The publisher of the Indiana Administrative Code shall publish 50 IAC 5.1 (as in effect January 1, 2001) in the Indiana Administrative Code.

(d) 50 IAC 5.2 and any other rule to the extent that it conflicts with this section is void.

(e) A reference in 50 IAC 5.1 to a governmental entity that has been terminated or a statute that has been repealed or amended shall be treated as a reference to its successor.

(f) The department of local government finance may not amend or repeal the following (all as in effect January 1, 2001):

(1) 50 IAC 5.1-6-6.

(2) 50 IAC 5.1-6-7.

(3) 50 IAC 5.1-6-8.

~~(4) 50 IAC 5.1-6-9.~~

~~(5)~~ (4) 50 IAC 5.1-8-1.

~~(6)~~ (5) 50 IAC 5.1-9-1.

~~(7)~~ (6) 50 IAC 5.1-9-2.

SECTION 4. IC 6-1.1-43-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 1. This chapter applies to the following economic development incentive programs:

(1) Grants and loans provided by the department of commerce under IC 4-4.

(2) Incentives provided in an economic revitalization area under IC 6-1.1-12.1.

(3) Incentives provided under IC 6-3.1-13.

(4) **Capital tax investment credit under IC 6-3.1-13.5.**

(5) Incentives provided in an airport development zone under IC 8-22-3.5-14.

SECTION 5. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 39. (a) As used in this section, "product" includes a pilot model, a process, a formula, an invention, a technique, a**

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1 patent, or a similar property. The term includes property to be
 2 used in a taxpayer's trade or business and property to be held for
 3 sale, lease, or license, regardless of whether the property is
 4 ultimately placed in service, sold, leased, or licensed.

5 (b) As used in this section, "research and development" means
 6 laboratory or experimental activity to develop or improve a
 7 product or to discover information that would eliminate
 8 uncertainty concerning the development or improvement of a
 9 product.

10 (c) The term "research and development" does not include any
 11 of the following:

12 (1) The ordinary testing or inspection of materials or products
 13 for quality control. The quality control testing to which this
 14 subdivision applies includes testing or inspection to determine
 15 whether particular units of materials or products conform to
 16 specified parameters. Quality control testing does not include
 17 testing to determine if the design of a product is appropriate.

18 (2) Efficiency surveys.

19 (3) Management studies.

20 (4) Consumer surveys.

21 (5) Advertising or promotions.

22 (6) The acquisition of another person's patent, model,
 23 production, process, or other product.

24 (7) Research in connection with literary, historical, or similar
 25 projects.

26 (8) Activities to ascertain the existence, location, extent, or
 27 quality of any deposit of oil, gas, ore, or other mineral.

28 (9) Assembly, construction, or installation of property that is
 29 placed in service or held for sale, lease, or license.

30 (d) As used in this section, "uncertainty" means the
 31 unavailability to the taxpayer of information necessary to establish
 32 the capability or method for developing or improving the product
 33 or the appropriate design of the product.

34 (e) Transactions involving tangible personal property are
 35 exempt from the state gross retail tax if the person acquiring the
 36 tangible personal property acquires it for direct use in research
 37 and development.

38 SECTION 6. IC 6-3-1-24 IS AMENDED TO READ AS FOLLOWS
 39 [EFFECTIVE JANUARY 1, 2005]: Sec. 24. The term "sales" means all
 40 gross receipts of the taxpayer not allocated under ~~IC 6-3-2-2(g)~~
 41 **IC 6-3-2-2(e)** through ~~IC 6-3-2-2(k)~~, **IC 6-3-2-2(i)**, other than
 42 compensation (as defined in section 23 of this chapter).

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SECTION 7. IC 6-3-2-2, AS AMENDED BY P.L.192-2002(ss),
SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JANUARY 1, 2005]: Sec. 2. (a) With regard to corporations and
nonresident persons, "adjusted gross income derived from sources
within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

In the case of nonbusiness income described in subsection ~~(g)~~; **(e)**, only so much of such income as is allocated to this state under the provisions of subsections ~~(h)~~ **(f)** through ~~(k)~~ **(i)** shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within ~~the state of~~ Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter) only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection ~~(r)~~ **(p)** is considered derived from sources within Indiana.

(b) Except as provided in subsection ~~(t)~~; **(j)**, if business income of a corporation or a nonresident person is derived from sources within ~~the state of~~ Indiana and from sources ~~without the state of~~ **outside** Indiana, then the business income derived from sources within ~~this state~~ **Indiana** shall be determined by multiplying the business income derived from sources both within and ~~without the state of~~ **outside** Indiana by a fraction; ~~the numerator of which is the property factor plus the payroll factor plus the sales factor. and the denominator of which is three (3).~~ However, after a period of two (2) consecutive quarters of income growth and one ~~(1)~~ additional quarter (regardless of any income growth); the fraction shall be computed as follows:

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(1) For all taxable years that begin within the first calendar year immediately following the period; the numerator of the fraction is the sum of the property factor plus the payroll factor plus one hundred thirty-three percent (133%) of the sales factor; and the denominator of the fraction is three and thirty-three hundredths (3.33):

(2) For all taxable years that begin within the second calendar year following the period; the numerator of the fraction is the property factor plus the payroll factor plus one hundred sixty-seven percent (167%) of the sales factor; and the denominator of the fraction is three and sixty-seven hundredths (3.67):

(3) For all taxable years beginning on or after January 1 of the third calendar year following the period; the numerator of the fraction is the property factor plus the payroll factor plus two hundred percent (200%) of the sales factor; and the denominator of the fraction is four (4):

For purposes of this subsection, income growth occurs when the state's nonfarm personal income for a calendar quarter increases in comparison with the state's nonfarm personal income for the immediately preceding quarter at an annualized compound rate of five percent (5%) or more; as determined by the budget agency based on current dollar figures provided by the Bureau of Economic Analysis of the United States Department of Commerce or its successor agency. The annualized compound rate shall be computed in accordance with the formula $(1+N)^4-1$, where N equals the percentage change in the state's current dollar nonfarm personal income from one (1) quarter to the next. As soon as possible after two (2) consecutive quarters of income growth, the budget agency shall advise the department of the growth.

(c) The property factor is a fraction; the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year. However, with respect to a foreign corporation, the denominator does not include the average value of real or tangible personal property owned or rented and used in a place that is outside the United States. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

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The average of property shall be determined by averaging the values at the beginning and ending of the taxable year; but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

(d) The payroll factor is a fraction; the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation; and the denominator of which is the total compensation paid everywhere during the taxable year. However, with respect to a foreign corporation, the denominator does not include compensation paid in a place that is outside the United States. Compensation is paid in this state if:

- (1) the individual's service is performed entirely within the state;
- (2) the individual's service is performed both within and without this state; but the service performed without this state is incidental to the individual's service within this state; or
- (3) some of the service is performed in this state and:
 - (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or
 - (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed; but the individual is a resident of this state.

(e) (c) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Sales of tangible personal property are in this state if:

- (1) the property is delivered or shipped to a purchaser, other than the United States government, within this state, regardless of the f.o.b. point or other conditions of the sale; or
- (2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:
 - (A) the purchaser is the United States government; or
 - (B) the taxpayer is not taxable in the state of the purchaser.

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Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for purposes of this chapter.

~~(f)~~ **(d)** Sales, other than receipts from intangible property covered by subsection ~~(e)~~ **(c)** and sales of tangible personal property, are in this state if:

(1) the income-producing activity is performed in ~~this state;~~
Indiana; or

(2) the income-producing activity is performed both within and ~~without this state~~ **outside Indiana** and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

~~(g)~~ **(e)** Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections ~~(h)~~ **(f)** through ~~(k)~~ **(i)**.

~~(h)~~ **(f)(1)** Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocated to this state:

- (i) if and to the extent that the property is utilized in this state; or
- (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

~~(i)~~ **(g)(1)** Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

- (i) the property had a situs in this state at the time of the sale; or
- (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

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(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(j) (h) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) (i)(1) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(j) (j) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) the exclusion of any one (1) or more of the factors;

(3) (2) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or

(4) (3) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) (k) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of

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Indiana by various taxpayers.

~~(m)~~ **(l)** For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

~~(o)~~ **(m)** Notwithstanding subsections ~~(t)~~ **(j)** and ~~(m)~~; **(k)**, the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

(1) a foreign corporation; or

(2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

~~(p)~~ **(n)** Notwithstanding subsections ~~(t)~~ **(j)** and ~~(m)~~; **(k)**, the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection ~~(o)~~~~(t)~~ **(m)**(1) or ~~(o)~~~~(t)~~ **(m)**(2) be reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections ~~(t)~~ **(j)** and ~~(m)~~; **(k)**.

~~(q)~~ **(o)** Notwithstanding subsections ~~(o)~~ **(m)** and ~~(p)~~; **(n)**, one (1) or more taxpayers may petition the department under subsection ~~(t)~~ **(j)** for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year.

~~(r)~~ **(p)** This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

(1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and

(2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance

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upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance.

SECTION 8. IC 6-3-2-2.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 2.4. (a) For purposes of section ~~2(c)~~ **2(m)** of this chapter, a corporation is a foreign operating corporation for a particular taxable year if it has eighty percent (80%) or more of its total business activity occurring outside the United States during the taxable year.

(b) For purposes of determining the amount of a corporation's business activity that occurs within the United States, the department shall determine the sum of that corporation's United States property factor and its United States payroll factor and divide that sum by two (2). If the quotient exceeds two-tenths (0.2), then less than eighty percent (80%) of the corporation's business shall be considered to have occurred outside the United States. If the quotient equals or is less than two-tenths (0.2), then eighty percent (80%) or more of the corporation's business shall be considered to have occurred outside the United States. If a corporation's United States property factor or its United States payroll factor has a denominator of zero (0), then the sum of the two (2) factors shall be divided by one (1) and not by two (2).

(c) The United States property factor of a corporation is a fraction. The numerator of the fraction is the average value of the corporation's real and tangible personal property owned or rented and used in the United States during the taxable year, and the denominator of the fraction is the average value of all the corporation's real and tangible personal property owned or rented and used anywhere in the world during the taxable year. Property owned by the corporation shall be valued at its original cost. Property rented by the corporation shall be valued at eight (8) times the net annual rental rate. The corporation's net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals. The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the corporation's property.

(d) The United States payroll factor of a corporation is a fraction. The numerator of the fraction is the total compensation to individuals paid in the United States during the taxable year by the corporation, and the denominator of the fraction is the total compensation to

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1 individuals paid anywhere in the world during the taxable year by the
 2 corporation. Compensation to an individual is paid in the United States
 3 if:

4 (1) the individual's service is performed entirely within the United
 5 States;

6 (2) the individual's service is performed both within and outside
 7 the United States, but the service performed outside the United
 8 States is incidental to the individual's service within the United
 9 States; or

10 (3) the individual is a resident of the United States, some of the
 11 service is performed in the United States, and:

12 (A) the base of operations or, if there is no base of operations,
 13 the place from which the service is directed or controlled is in
 14 the United States; or

15 (B) the base of operations or, if there is no base of operations,
 16 the place from which the service is directed or controlled is not
 17 in a jurisdiction that is outside the United States and that is
 18 where some part of the service is performed.

19 SECTION 9. IC 6-3.1-13.5-3, AS AMENDED BY P.L.170-2002,
 20 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JANUARY 1, 2005]: Sec. 3. As used in this chapter, "qualified
 22 investment" means the amount of the taxpayer's expenditures for:

23 (1) the purchase of new manufacturing or production equipment;

24 (2) the purchase of new computers and related equipment;

25 (3) costs associated with the modernization of existing
 26 manufacturing facilities;

27 (4) onsite infrastructure improvements;

28 (5) the construction of new manufacturing facilities;

29 (6) costs associated with retooling existing machinery and
 30 equipment; and

31 (7) costs associated with the construction of special purpose
 32 buildings and foundations for use in the computer, software,
 33 biological sciences, or telecommunications industry;

34 that are certified by the department under section 10 of this chapter as
 35 being eligible for the credit under this chapter. ~~if the equipment,~~
 36 ~~machinery; facilities improvements; facilities; buildings; or foundations~~
 37 ~~are installed or used for a project having an estimated total cost of at~~
 38 ~~least seventy-five million dollars (\$75,000,000) and in a county having~~
 39 ~~a population of more than forty-three thousand (43,000) but less than~~
 40 ~~forty-five thousand (45,000).~~

41 SECTION 10. IC 6-3.1-13.5-6, AS ADDED BY P.L.291-2001,
 42 SECTION 177, IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JANUARY 1, 2005]: Sec. 6. (a) Subject to the provisions of this chapter, a taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year if the taxpayer makes a qualified investment in that year.

(b) The amount of the credit to which a taxpayer is entitled is the qualified investment made by the taxpayer during the taxable year multiplied by ~~fourteen~~ **thirty** percent (~~14%~~) (**30%**).

SECTION 11. IC 6-3.1-25 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]:

Chapter 25. Certified Job Skills Training Program Employer Credit

Sec. 1. As used in this chapter, "certified job skills training program" means a job skills training program certified by the department of workforce development under IC 22-4.1-7.

Sec. 2. As used in this chapter, "full-time employee" means an individual who is employed for consideration for at least thirty-five (35) hours each week or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

Sec. 3. As used in this chapter, "pass through entity" means:

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a limited liability company; or
- (4) a limited liability partnership.

Sec. 4. As used in this chapter, "qualified employer" means a person, corporation, or pass through entity that employs more than two hundred fifty (250) full-time employees during the taxable year in which the employer incurs training program expenditures subject to a credit under this chapter.

Sec. 5. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);
- (2) IC 6-5.5 (financial institutions tax); and
- (3) IC 27-1-18-2 (insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 6. As used in this chapter, "training program expenditures" means expenses incurred by a qualified employer for any of the following:

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(1) Sponsoring or cosponsoring a certified job skills training program that the qualified employer provides to its employees, to the extent the expenses are incurred in providing the training to its employees and not to other program participants, and including any fees or revenue lost by providing the program to its employees at no cost or at a reduced cost.

(2) Reimbursing an employee for participation in a certified job skills training program not sponsored or cosponsored by the qualified employer.

Sec. 7. Except as provided in this chapter, a qualified employer is entitled to a credit against the qualified employer's state tax liability for training program expenditures made by the qualified employer in a taxable year. The amount of the credit is equal to the qualified employer's training program expenditures in the taxable year multiplied by fifty percent (50%).

Sec. 8. (a) A qualified employer is not eligible for a credit for training program expenditures made in a taxable year if the qualified employer also receives an employee training grant described in subsection (b) for training program expenditures made in the same taxable year.

(b) A training grant disqualifies a qualified employer from a credit under this chapter if the training grant:

(1) is provided by the state; and

(2) is payable from state tax revenues or employer assessments deposited in:

(A) the training 2000 fund established by IC 4-4-4.6-6;

(B) the Indiana strategic development fund established by IC 4-4-23-6;

(C) the counter-cyclical revenue and economic stabilization fund established by IC 4-10-18-2;

(D) the employment and training services administration fund established by IC 22-4-24-1;

(E) the skills 2016 training fund established by IC 22-4-24.5-1; or

(F) the special employment and training services fund established by IC 22-4-25-1.

Sec. 9. A training program expenditure reimbursed in any part by any governmental program is ineligible for a credit under this section.

Sec. 10. (a) If the amount determined under section 7 of this chapter for a qualified employer in a taxable year exceeds the

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1 qualified employer's state tax liability for that taxable year, the
 2 qualified employer may carry the excess over to the following
 3 taxable years. The amount of the credit carryover from a taxable
 4 year shall be reduced to the extent that the carryover is used by the
 5 qualified employer to obtain a credit under this chapter for any
 6 subsequent taxable year. A qualified employer is not entitled to a
 7 carryback.

8 (b) A qualified employer is not entitled to a refund of any
 9 unused credit.

10 Sec. 11. If a qualified employer is a pass through entity that does
 11 not have state income tax liability against which the tax credit may
 12 be applied, a shareholder or partner of the pass through entity is
 13 entitled to a tax credit equal to:

14 (1) the tax credit determined for the pass through entity for
 15 the taxable year; multiplied by

16 (2) the percentage of the pass through entity's distributive
 17 income to which the shareholder or partner is entitled.

18 Sec. 12. To receive the credit provided by this chapter, a
 19 qualified employer must claim the credit on the qualified
 20 employer's state tax return in the manner prescribed by the
 21 department. The qualified employer must submit to the
 22 department proof of payment of the training program
 23 expenditures, proof that the expenditures were for job skills
 24 training programs certified by the department of workforce
 25 development under IC 22-4.1-7, and all information that the
 26 department determines is necessary for the calculation of the credit
 27 provided by this chapter.

28 Sec. 13. The department of workforce development shall
 29 establish an audit program to verify the eligibility of a taxpayer for
 30 a credit received under this chapter and the amount of the credit
 31 to which the taxpayer is entitled under this chapter. The
 32 department of workforce development may carry out this section
 33 by inspection or by review of information submitted by the
 34 taxpayer to the department, or both. The department of workforce
 35 development may adopt rules under IC 4-22-2 to specify the
 36 records that a taxpayer must keep and the informational reports
 37 that the taxpayer must provide to the department of workforce
 38 development.

39 SECTION 12. IC 22-4.1-7 IS ADDED TO THE INDIANA CODE
 40 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 41 UPON PASSAGE]:

42 **Chapter 7. Certified Job Skills Training Program**

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1 **Sec. 1.** As used in this chapter, "certified job skills training
2 program" refers to an internship program that is certified by the
3 department, in consultation with the department of education,
4 under section 6 of this chapter.

5 **Sec. 2.** As used in this chapter, "employer" has the meaning set
6 forth in IC 22-8-1.1-1.

7 **Sec. 3.** As used in this chapter, "institution of higher learning"
8 has the meaning set forth in IC 20-12-70-4.

9 **Sec. 4.** As used in this chapter, "student" means an individual
10 who:

11 (1) is enrolled on at least a part-time basis at an institution of
12 higher learning that has a certified job skills training
13 program; and

14 (2) participates in a certified job skills training program
15 conducted by the institution of higher learning.

16 **Sec. 5.** As used in this chapter, "targeted employment" means
17 employment in any of the following business activities:

18 (1) Advanced manufacturing, including any of the following:

19 (A) Automotive and electronics.

20 (B) Aerospace technology.

21 (C) Robotics.

22 (D) Engineering design technology.

23 (2) Life sciences, including any of the following:

24 (A) Orthopedics or medical devices.

25 (B) Biomedical research or development.

26 (C) Pharmaceutical manufacturing.

27 (D) Agribusiness.

28 (E) Nanotechnology or molecular manufacturing.

29 (3) Information technology, including any of the following:

30 (A) Informatics.

31 (B) Certified network administration.

32 (C) Software development.

33 (D) Fiber optics.

34 (4) Twenty-first century logistics, including any of the
35 following:

36 (A) High technology distribution.

37 (B) Efficient and effective flow and storage of goods,
38 services, or information.

39 (C) Intermodal ports.

40 **Sec. 6.** (a) An institution of higher learning that seeks
41 certification for an internship program under this chapter must
42 submit an application for certification to the department on a form

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prescribed by the department.

(b) The department, in consultation with the department of education, shall certify an internship program under this chapter if the program:

(1) is operated or administered by an institution of higher learning or a department, school, or program within an institution of higher learning;

(2) integrates a particular curriculum or course of study offered at the institution of higher learning with career internships provided by employers;

(3) places students in career internships provided by employers in targeted employment;

(4) requires participating students to meet certain academic standards established by rule by the department in consultation with the department of education;

(5) requires employers to provide to participating students the:

(A) supervision; and

(B) payroll and personnel services;

that the employers provide to their regular part-time employees, if any;

(6) is designed to provide an internship experience that enriches and enhances the classroom experience of participating students in the field of the targeted employment;

(7) requires employers to comply with all state and federal laws pertaining to the workplace; and

(8) complies with any other requirement adopted by rule by the department after consultation with the department of education.

Sec. 7. A certified job skills training program may allow a student to participate in an internship at any time during the year, including the summer, as long as the student remains enrolled at the institution of higher learning that operates or administers the certified job skills training program.

Sec. 8. The department, in consultation with the department of education, may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 13. [EFFECTIVE JULY 1, 2004] (a) IC 6-1.1-3-22 and IC 6-1.1-8-44, both as amended by this act, apply to assessment dates after December 31, 2004, and to property taxes first due and payable after December 31, 2005.

(b) IC 6-3-1-24, IC 6-3-2-2, and IC 6-3-2-2.4, all as amended by

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1 this act, apply only to taxable years beginning after December 31,
2 2004.

3 (c) For purposes of IC 6-2.5-5-39, as added by this act, all
4 transactions shall be considered as having occurred after June 30,
5 2004, to the extent that delivery of the property or services
6 constituting selling at retail is made after that date to the
7 purchaser or to the place of delivery designated by the purchaser.
8 However, a transaction shall be considered as having occurred
9 before July 1, 2004, to the extent that the agreement of the parties
10 to the transaction was entered into before July 1, 2004, and that
11 payment for the property or services furnished in the transaction
12 is made before July 1, 2004, notwithstanding the delivery of the
13 property or services after June 30, 2004.

14 (d) IC 6-3.1-13.5-3 and IC 6-3.1-13.5-6, both as amended by this
15 act, and IC 6-3.1-25, as added by this act, apply only to taxable
16 years beginning after December 31, 2004. The amendment of
17 IC 6-3.1-13.5-3 and IC 6-3.1-13.5-6 by this act does not affect the
18 availability or the amount of a credit granted to a taxpayer under
19 IC 6-3.1-13.5-3 and IC 6-3.1-13.5-6 as it existed before the
20 amendment of these provisions by this act.

21 SECTION 14. An emergency is declared for this act.

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